

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT B. CARPENTER

Claimant

VS.

NATIONAL FILTER SERVICE

Respondent

AND

TRAVELERS INSURANCE COMPANY

Insurance Carrier

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Docket No. 227,852

ORDER

The insurance carrier appealed from the Order entered by Administrative Law Judge John D. Clark on November 20, 1997.

APPEARANCES

Claimant appeared by his attorney, Darla J. Lilley of Wichita, Kansas. The respondent appeared by its attorney, Kendall R. Cunningham of Wichita, Kansas. The Travelers Insurance Company and Royal Insurance Company appeared by their attorney, William L. Townsley, III, of Wichita, Kansas.

RECORD AND STIPULATIONS

The record consisted of the transcript of proceedings held before Administrative Law Judge John D. Clark on November 20, 1997, and the documents contained in the Division of Workers Compensation's administrative file.

ISSUES

At the time of the accident, respondent had a workers compensation insurance policy with Royal Insurance Company. Travelers Insurance Company administers claims in Kansas for Royal. The Administrative Law Judge ordered "Travelers Insurance/Royal Insurance" to pay preliminary benefits.

Travelers/Royal deny their policy covers this claim in Kansas because its provisions expressly limit coverage to the state of Virginia. The Administrative Law Judge's assessment of benefits against the insurance companies is the single issue for Appeals Board review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

Before the Appeals Board discusses the merits of this appeal, it will first address whether it has jurisdiction to review the Administrative Law Judge's November 20, 1997, Order.

This is not an appeal from an order entered pursuant to the preliminary hearing statute. K.S.A. 1997 Supp. 44-534a limits preliminary hearings to issues involving compensability of the claim and the award of temporary total disability and medical compensation. An appeal from a preliminary hearing either must allege that the administrative law judge exceeded his/her jurisdiction or one of the jurisdictional issues listed in K.S.A. 1997 Supp. 44-534a must be raised. This appeal is a result of a hearing held, prior to the final award, on the insurance companies' denial of coverage and request that the Administrative Law Judge determine coverage. Compensability of the claim is not an issue on appeal. The Administrative Law Judge's jurisdiction to decide the insurance coverage issue is, likewise, not disputed.

For the Appeals Board to have jurisdiction to review this order, at this juncture of the proceeding, the appeal would have to be brought pursuant to K.S.A. 1997 Supp. 44-551(b)(1). The 1997 Kansas Legislature amended K.S.A. 1996 Supp. 44-551(b)(1). Effective July 1, 1997, the amendment changed the jurisdiction of the Appeals Board from reviewing "[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge" to review of "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge."

The Appeals Board finds the portion of the Administrative Law Judge's Order that is the subject of this appeal is not a final order, award, modification of an award, or a preliminary hearing award as contemplated by K.S.A. 1997 Supp. 44-551(b)(1). The Appeals Board concludes the Order is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. Therefore, the Appeals Board lacks jurisdiction to review the order until it is contained in a final order or award.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the insurance companies' appeal from the Order entered by Administrative Law Judge John D. Clark dated November 20, 1997, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Darla J. Lilley, Wichita, KS
Kendall R. Cunningham, Wichita, KS
William L. Townsley, III, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director